

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ANTONIO VARGAS,

Plaintiff,

-against-

9:22-CV-0806 (LEK/ML)

LAVALLEY, *et al.*,

Defendants.

DECISION AND ORDER

Plaintiff Antonio Vargas commenced this action by filing a pro se complaint for relief pursuant to 42 U.S.C. § 1983, together with an application to proceed in forma pauperis. Dkt. No. 1 (“Complaint”); Dkt. No. 2 (“IFP Application”). Presently before the Court is a letter from Plaintiff addressed to the Honorable Miroslav Lovric, United States Magistrate Judge, in this case, wherein Plaintiff states, in pertinent part, as follows: “I Antonio Vargas is not going further with the case 9:22-CV-00806-LEK-ML Vargas vs LaValley et al so please drop the case.” Dkt. No. 16.

The Court construes Plaintiff’s letter as a notice of dismissal of this action pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, which states, in relevant part, as follows: “[A] plaintiff may dismiss an action without a court order by filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.” Fed. R. Civ. P. 41(a)(1)(A)(i). Since none of the Defendants in this case have answered the Complaint or moved for summary judgment, Plaintiff was entitled to voluntary dismissal of this action without prejudice, without further order of the Court, upon the filing of his notice of dismissal.

In light of the foregoing, upon the filing of Plaintiff's notice requesting to withdraw this action, this action was dismissed, without prejudice, and an order of the Court was not required in order to implement that dismissal.

Accordingly, it is hereby:

ORDERED, that in accordance with Plaintiff's notice (Dkt. No. 16) to voluntarily dismiss this action, the Clerk of Court shall close this case and reflect that the action is voluntarily dismissed without prejudice pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure; and it is further

ORDERED, that the Clerk of Court shall serve Plaintiff with a copy of this Decision and Order, along with a copy of his notice (Dkt. No. 16).

IT IS SO ORDERED.

DATED: January 30, 2023
Albany, New York



LAWRENCE E. KAHN
United States District Judge